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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P.NO.163 OF 2006

PETITIONER Raju @ Rajnarayan

Vs.

RESPONDENTS State of Chhattisgarh & anr

POST FOR ORDERS ON 27TH SEPTEMBER, 2007

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P.No.163/2006

PETITIONER — Raju @ Rajnarayan Sahu, S/o Late Shri Sunderlal Sahu, aged about 40 yrs. R/o Nehru Chowk, Balodabazar, District Raipur (CG)

Vs

RESPONDENTS
1. State of Chhattisgarh, Through Secretary, Home, Police Department, Mantralaya Raipur (C.G.).
2. P.N. Upadhyay, the then Station House Officer, Balodabazar, Dist. Raipur.

Present:
Mr. Prakash Tiwari, Advocate for the petitioner.

Mr. G.K. Beriwal, Dy. Adv. General for respondent No.1.

O R D E R
(Passed on 27.9.2007)

Per Dhirendra Mishra, J:

1. I.A. No.1/07, application for taking documents on record is allowed.

2. The petitioner by the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') has prayed for setting aside the order dated 28.8.2006 (Annexure P-1) passed by learned 1st Additional Sessions Judge, Baloda Bazar in Criminal Revision No.141/06 whereby the revisional court has rejected the revision preferred by the petitioner herein against the order dated 6.3.2006 (Annexure P-4) passed in an unregistered case whereby the Judicial Magistrate 1st Class, Balod Bazar has dismissed the complaint filed by the petitioner herein against the respondent No.2 herein.

3. Briefly stated facts are that the petitioner herein filed a complaint under Sections 193, 211, 342, 347, & 500 of the Indian Penal Code (for short 'IPC') against the respondent

No.2 herein with the allegations that respondent No.2 herein with an intention to harass and defame the petitioner herein prepared false cases against him and filed Istgasha in the courts of Sub Divisional Magistrate, Baloda Bazar and Judicial Magistrate 1st Class, Baloda Bazar. The petitioner has been acquitted by the Judicial Magistrate whereas, preliminary order passed by the Sub Divisional Magistrate on the basis of Istgasha filed by respondent No.2 was quashed in revision vide order of Annexure P-2 dated 15.11.2003 by the 2nd Additional Sessions Judge, Baloda Bazar. The petitioner was arrested in connection with the above offence and confined by respondent No.2. He had moved an application under Section 197 of the Cr.P.C. for permission to prosecute respondent No.2, however, the same was returned by the State on the ground on incomplete address.

4. The Judicial Magistrate rejected the complaint case vide order of Annexure P-4 dated 6.3.2006 only on the ground that the petitioner has not obtained sanction of the State Government for prosecuting the respondent No.2 and the revision preferred by the petitioner was also rejected by the impugned order of Annexure P-1 dated 28.8.2006.

5. Placing reliance on the judgment in the matter of **Ramesh Pal Vs. Ajhar Alam (SP) (ISP)** reported in **1985 Cri.L.J. NOC 10 (Punj. & Har.)** it is argued that it is none of the duty of the Investigating Officer to frame a person in a false case and such police officer is not entitled to protection of sanction under Section 197 of the Cr.P.C. Relying upon the judgment in the matter of **Raj Kishor Roy Vs Kamleshwar Pandey** reported in **2003 (1) M.P.W.N. (Note No.85)** it is argued that the complaint case cannot

be quashed at initial stage and where the act is not in the discharge of duty, no sanction is required.

6. On the other hand, learned counsel for the State submits that from perusal of the complaint it is clear that respondent No.2-Station House Officer, Police Station Baloda Bazar in the discharge of his official duty registered certain offences under the Gambling Act and also initiated preventive proceedings under the Cr.P.C. and Istgasha was filed, as per requirement of law, in the court of Sub Divisional Magistrate. A bare perusal of the complaint goes to show that acts alleged against the respondent No.2 were done by him during the discharge of his public duty and after due investigation Istgasha was filed by him in the Court of competent jurisdiction. The revisional court, by impugned order after considering the objections preferred by the petitioner in detail, has rejected the revision and upheld the order of the Judicial Magistrate. Both the courts below on the basis of allegations present in the complaint have recorded a finding of fact that the action taken by respondent No.2 was in the discharge of his public duty and therefore, this petition in the garb of Section 482 of Cr.P.C. is not maintainable.

7. I have heard learned counsel for the petitioner and respondent No.1-State.

8. The Judicial Magistrate dismissed the complaint for want of sanction with a finding that from perusal of the complaint it appears that the accused took action against the complainant in discharge of his official duty and therefore, sanction of the State Government under Section 197 of Cr.P.C. is necessary for registration of offence against the public servant. The revisional court has also

rejected the criminal revision of the petitioner herein by a detailed and reasoned order.

9. So far as the judgments cited by learned counsel for the petitioner are concerned, the cited cases are distinguishable on facts, as in the matter of Ramesh Pal (supra) allegation of inflicting torture during investigation was made against the accused police officer, whereas, in the matter of Raj Kishor Roy (supra) allegations were made against the police officer that he had falsely implicated the complainant and his brother in order to teach them a lesson for not paying anything to him and accordingly, an illegal weapon and cartridges were brought by the police officer and the same were falsely shown to have been recovered from the complainant and his brother and in the light of the facts of that case, it was held that view of the High Court was not right that even if these facts are true, then also the case would come within the purview of Section 197 of the Cr.P.C. In this judgment it has also been held that general proposition of law is that bar under Section 197 of the Cr.P.C. is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty and there can be no dispute with that proposition.

10. However, in the instant case from bare perusal of the complaint it is clear that respondent No.2 initiated preventive measures against the petitioner under Sections 107 & 117 of the Cr.P.C., filed Istgasha before the Sub Divisional Magistrate, who passed preliminary order, which was subsequently set aside in a criminal revision preferred by the petitioner herein. Respondent No.2 also filed Istgasha under Sections 3 & 4 of the Gambling Act in which also the accused was acquitted. Therefore, both the courts

below have dismissed the complaint with a finding that all the acts attributed to respondent No.2 were done by him during discharge of his official duty.

11. After going through the impugned orders, this Court is satisfied that the Courts below have not committed any illegality or infirmity in passing the impugned orders, which call for interference in exercise under Section 482 of the Cr.P.C.

12. In the result, the petition being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Roshan/-